

# Newsflash

**BAN TACS** Accountants Pty Ltd



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Welcome to the BAN TACS News Flash. Our aim is to provide short but succinct updates on all tax issues.

## Column By Noel Whittaker

In the last few weeks we have been discussing what you can do with your super when you retire. Today let's think about annuities.

There is no exit tax for those aged between 55 and 60's when funds are rolled from the superannuation area into an annuity and the return of the annuity will somewhat in line with long term bond rates, currently around 6%. The advantage of an annuity is that it can give you a capital guaranteed income for life, but it is an extremely inflexible investment. It is almost impossible to vary your income from the annuity; you can't make lump sum withdrawals, and unless the annuity has a guaranteed period, the money is lost to your estate on death.

Obviously, the allocated pension is much more flexible, and if based on growth investments, should give a much higher effective return over time than an annuity. Given that today's retirees may live for more than 30 years, it is clear that an allocated pension could provide hundreds of thousands of dollars more than an annuity over a long term.

What about the fear of your money running out if you have an allocated pension?

This shows a basic misunderstanding of the way allocated pension funds work.

Certainly you are required to draw a minimum pension each year to prevent your accumulating funds in a tax-free haven forever, but once you transfer the money from the allocated pension fund to your ordinary account, you can spend it or invest it wherever you wish. Unfortunately, you can't put it back into your tax-free allocated pension fund.

Be aware that annuities bought before 20th September have unique benefits for retirees as Centrelink will count only 50% of the purchase price for the assets test. As usual, advice is critical because the best course of action will depend on your individual circumstances.

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**David Thompson from Whittaker Macnaught is regularly available to see clients in our office.**

## **New Workplace Rule Takes Effect**

By the 20<sup>th</sup> October, 2007 all employers with, employees under the Federal system, must have given their employees a Workplace Relations Fact Sheet. To get a copy of the fact sheet go to:  
[www.workplaceauthority.gov.au/docs/EMPLOYERS/FactSheet/FS-WR-020707.pdf](http://www.workplaceauthority.gov.au/docs/EMPLOYERS/FactSheet/FS-WR-020707.pdf)

## **Do you pay your PAYG Instalment Annually?**

If you pay your PAYG instalment annually (the old provisional tax) then you will be due to make your annual payment for the financial year ending 30<sup>th</sup> June, 2007 on 21<sup>st</sup> October, 2007. If you have already lodged your 2007 income tax return there is not need to worry about paying this.

## **The ATO has a heart**

In a recent Private Binding Ruling by the ATO appears to have taken pity on a taxpayer who had a bad run

In PBR 71690 the taxpayer had to repair the ceilings in a rental property twice before it was discovered that the builder had not put flashings in the walls. The first round of repairs the ATO disallowed as initial repairs but the second repair they let through.

TR 97/23 at paragraph 63 discusses how initial repairs are not tax deductible and describes these as repairs that were necessary when the property was purchased or became necessary because of a fault existing when the property was purchased.

Even if the purchaser was not aware that the repairs needed doing or that the price paid did not reflect the defect, the cost of the repairs are still not deductible. Further, it states that if the state of disrepair of the property at the time of purchase was directly responsible for further damage all the repairs relating to that damage are considered improvements (Law Shipping Co. UK).

If you are thinking that your hard luck story may arouse similar sympathy you had better make it good. In PR 71690 the water damage was so bad that not only did ceilings collapse but the stairway became a waterfall.

## **Personal Services Income – Business Premises**

For full details of how this legislation works refer our Alienation of Personal Services Income (APSI) Booklet available under free publications on our web site.

To be able to distribute income from personal services to other family members you have to meet at least one of the conditions in a very strict set of rules. One of these conditions is that the business has its own premises. There are then a set of rules, all of which must be met for the premises to be considered business premises. Of particular concern for home based businesses is that the premises must be physically separate from any used for private purposes.

This has been tested in through the courts in Dixon Consulting P/L v FC of T. The Dixons had a two story garage structurally separate from their house that was used to house the company cars, some of their children's belongings downstairs and the company's office upstairs. There were signs that clearly showed the area to be a place of business though the drive way was shared with the home and clients used some of the shared yard.

The Federal court has just ruled that the AAT was incorrect in deciding that as long as the premises were mainly used for the business they passed the test. The Federal court then remitted the matter back to the AAT for the final ruling.

The AAT in its final decision emphasised that the following factors disqualified the premises from being physically separate from the home:

- 1) The two cars may have been company cars but there was some private use of them.
- 2) The storage of some items owned by the Dixon children.
- 3) There was insufficient physical separation from the home.

This seems to put an end to any argument that premises on the same piece of land as the family home can qualify as business premises for the purposes of the APSI legislation. The reference to private use of vehicles stored on the business premises and some private items really opens the flood gates for the ATO to attack any business premises. It maybe important to take that photo of your family off your desk straight away!

## Update on which “Utes” don’t need log books

Some Utes and Panel Vans are not subject the substantiation rules. For example if you or your employees drive a “ute” you own and it is used primarily to drive to and from work and other work related journeys then you can claim the associated expenses as a tax deduction without having to keep a log book.

This article looks into what is actually a “ute” as we commonly refer to it. There are two sections of the Act that consider the vehicles that qualify. A “Ute” would qualify if meets the requirements of a non car according to the act. Non cars need to be designed to carry a load of one tonne or more. So I doubt that the old Hyundai mighty boy (with barely space for a brief case in the load compartment) would qualify. All is not lost a vehicle that is designed to carry a load of less than one tonne can qualify if the principal purpose of its design is not to carry passengers. Still not sure this would help the mighty boy, but it does help conventional utes and panel vans and some dual cabs.

The ATO has just recently updated MT 2024 which has a list of dual cab vehicles it considers will qualify as utes for the purpose of this concession.

To consider whether the vehicle qualifies as not principally designed to carry passengers all depends on the ratio of passenger space to payload space and can be worked out by multiplying the number of people the vehicle is licensed to carry by 68kgs and comparing it with the payload. Calculating the payload is discussed below.

Now a little bit on whether a vehicle is designed to carry a load of one tonne or more. The payload according to MT 2024 is the difference between the gross vehicle mass (GVM as stated on the compliance plate) and the weight of the vehicle with a full tank of fuel, oil and coolant together with the spare wheel, jack etc and any accessories fitted. Note this may not necessarily be the TARE.

If this is all too hard have a look at the list of vehicles in MT 2024. Warning, the ruling lists vehicles that do and do not qualify so make sure you go back through the pages to the heading at the start of the list.

In summary to qualify for the substantiation exemption that applies to a “ute” a vehicle must be:

- 1) Only used to travel for work, to and from work and travel incidental to work i.e. buy lunch. The only exception to this is minor and irregular private travel. And
- 2) The vehicle must be designed to carry a load of 1 tonne or more or be designed principally to carry passengers.

## Tax Free Redundancy Payments From Your Own Business

Back in December 2002 the ATO announced that taxpayers who are employees of their own business that must apply to the ATO for approval if they pay themselves a tax exempt bona fide redundancy payment.

At the time we had a little rant about the ATO making up its own rules. Well the matter has finally gone before the courts and the ATO lost. Nevertheless the ATO is still making up its own rules. The case reference is Long v FCT 2007 ATC 2155. Important factors in the case were:

- 1) The payment was what would have been paid if the parties were dealing with each other at arms length
- 2) While the employee was involved in the decision to close the business, the need arose because their only customer terminated the contract.
- 3) Mrs Long’s son also received a redundancy payment and he was not a director though other employees did not

The tax office has since issued a Decision Impact Statement claiming that the judgement is only limited to the particular facts of the case. The only thing the ATO is prepared to take on board from Long’s case is that it is not an automatic exclusion from the redundancy concessions just because the employee was involved in the decision to terminate their own employment. The ATO certainly wouldn’t approve of a bona fide redundancy payment to an employee (owner) who decided to sell the business. Not that this matters as in most cases the small business concessions provide all the tax relief needed.

For the 2008 financial year the maximum tax free bona fide redundancy payment an employee can receive is \$7,020 plus \$3,511 for each full year of service.

A bona fide redundancy payment is not always the best option if the directors are likely to be in a low tax bracket in the future, due to retirement, and the company has franking credits. It may be more appropriate to take the assets out of the company as a fully franked dividend and possibly get some of the

franking credits refunded because the taxpayer's average marginal rate on all the dividend income is less than 30%. Once the company is closed the franking credits will be lost forever.

## Free, Grow Your Business Checklist

The Federal Government have made available on there web site information to assist businesses. Go to [www.business.gov.au/Business+Entry+Point/Information/Checklist.htm](http://www.business.gov.au/Business+Entry+Point/Information/Checklist.htm)

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## Where is Julia?

Absolutely loving the tropical weather in Darwin and determined to make it to the wet season.

## Back Issues & Booklets

To obtain free back issues of the fortnightly BAN TACS Newsflash or any of the following booklets visit our web site on [www.bantacs.com.au](http://www.bantacs.com.au). You can also subscribe to our Newsflash reminder.

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### Disclaimer:

Please note in many cases the legislation referred to above has only just passed through parliament. The full effect is not clear yet but it is already necessary to make you aware of the ramifications despite the limited commentary available. On the other side of the coin by the time you read this information it may be out of date. The information is presented in summary form and intended only to draw your attention to issues you should further discuss with your accountant. Please do not act on this information without further consultation. We disclaim any responsibility for actions taken on the above without further advice as to your particular circumstances.